IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.12 OF 2005

Balaram Balu Patil ...Appellant

Vs.

Dharma Balu Patil & Ors. ...Respondents

Mr.Dundappa B. Patil for the Appellant
Mr.S.N.Gawade i/b M/s Ram & Co. for Respondent Nos.1 & 2.

CORAM: A.S.OKA, J.
DATED: FEBRUARY 3,2005.

P.C.:

1. Heard Counsel appearing for the parties. This Second Appeal arise out of the suit filed by the Appellant for declaration and injunction. The said suit proceeds on assumption that the Appellant/Plaintiff is the exclusive owner of the suit land. A cross suit was filed by the Respondent Nos.1 and 2 for partition and separate possession in respect of the said land. Therefore, both the suits were heard together. The Trial Court recorded a finding that the suit property is the joint family property of the parties to both the suits and that the Appellant failed to prove that he is the exclusive owner of the suit property. Therefore, the Trial Court dismissed the suit filed by the Appellant and decreed the suit filed by the Respondent Nos.1 and 2.

2. There were two Appeals preferred by the Appellant herein. The Appeals were decided by a common Judgment and have been

dismissed and the findings recorded by the Trial Court have been confirmed by the Appellate Court.

3. The learned Counsel for the Appellant submitted that earlier the suit property was a joint family property and it was lost to the State Government and the Appellant has reacquired it. Relying upon the Judgment reported in A.I.R. 1960 Mysore 97 V 47 C 28 (Revappa Vs. Madhav Rao & another) he submitted that other coparceners have no right, title or interest in the suit property. He submitted that the Trial Court has committed an error by trying both the suits together and the Appellate Court has committed an error by hearing and deciding both the Appeals by a common Judgment. He placed reliance on Judgment delivered by the Apex Court reported in (2003) 11 S.C.C. (Naralasetti Thammarao & others Vs. Duvva Veerraju & others).

4. I have considered the submissions. In the plaint filed by the Appellant he has asserted that he is the exclusive owner of the suit property. He has not come up with a specific case as to how he has reacquired the property. He has pleaded existence of family arrangement between him and the Respondent Nos.1 and 2. He relied upon an order of a Survey Officer for establishing his exclusive title. Obviously the Survey Officer cannot decide the question of title. Admittedly, at one point of time the property was a joint family property. It is not shown from the record the

manner in which the Appellant re-acquired the joint family property which was lost to the family. In this view of the matter, the Appellate Court has held that the property is a joint family property and therefore the decree for partition has been passed in favour of the Respondent Nos.1 and 2 in the suit filed by them. There is a concurrent finding of both the Courts on the issue whether the suit property was a joint family property.

5. The main issue which was to be decided before the Trial Court in both the suits was whether the suit property was exclusive property of the Appellant or was property of the joint family. The final decision in both the suits depended on the said issue and therefore no fault can be found if the learned Trial Judge heard and decided the suits together. For the same reason the Appellate Court cannot be blamed if both the Appeals were heard and decided together. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.